(28)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Dilip Raosaheb Deshmukh, J.

M.A.(C.) No.1023 of 2007

APPELLANT Bajaj Allianz General Insurance Company Limited, Shiv Mohan Bhavan, Vidhan Sabha Road, Pandri, Raipur (C.G.)

versus

RESPONDENTS

1. Ramashankar S/o Late Vishram Kurre, aged about 50 years;
2. Radha Bai W/o Ramashankar, aged about 48 years, Both R/o City Rambhata, Raigarh P.S. City Kotwali (C.G.)

(Claimants)

3. Vinod Ekka S/o Jailal Ekka, Age 23 years, R/o Through Commissioner, Nagar Palik Nigam, Raigarh (C.G.)

(Driver)

4. Commissioner, Nagar Palik Nigam, Raigarh (C.G.)

(Owner)

Memorandum of Appeal under Section 173 of the Motor Vehicles Act, 1988 as amended by Act of 1994

Present : Shri Abhishek Sinha with Shri Ghanshyam Patel, counsel for the appellant.
Shri H.B. Agrawal, Senior Advocate with Ms. Sangeeta Mishra, counsel for respondents No. 3 & 4.
No one appears for respondents No. 1 & 2, though served.

ORAL ORDER
(Passed on 23rd October, 2007)

Shri Abhishek Sinha, learned counsel for the appellant did not press on I.A. No. 1 which is an application for staying the effect and operation of the impugned award and its execution thereof.

2. Accordingly, I.A. No. 1 is dismissed as not pressed.

3. At the request of the learned counsel for the parties, this appeal is being heard finally and disposed of at the stage of admission.

4. Heard.

5. The appellant/Insurance Company is aggrieved by an award dated 01-08-2007 passed by the IVth Additional Motor Accidents Claims Tribunal (F.T.C.), Raigarh (hereinafter referred to as "the MACT"), in Claim Case No. 2/2007, whereunder in a death case, the MACT awarded compensation of Rs.2,69,520/-.

6. Brief admitted facts in this appeal are that on 20.03.2007 at 11.30 A.M., the deceased Praveen Kumar, aged 22 years, was seated on a tanker and witnessing a cricket match. The said tanker was parked in Sanjay Maidan, Rambhata, Raigarh. The tanker was attached to a tractor bearing registration No. C.G.13-8127 which was owned by the Municipal Corporation, Raigarh and insured by the appellant/insurance company. Respondent No. 3 - Vinod Ekka, the driver of the tanker suddenly started the tanker, due to which Praveen Kumar fell down and was crushed underneath the tractor and died.

7. The appellant/insurance company took a plea that although the tractor was insured by it the tanker was not. On 17.7.2007, the MACT closed the evidence of claimants and fixed the case for recording evidence of the owner, driver and the insurance company on 30-07-2007. On 30-07-2007, counsel for the insurance company prayed for an adjournment for leading evidence. However, the MACT rejected the prayer and closed the case finally on that date. By the impugned award, the MACT fastened the liability on the insurance company to pay compensation.

8. Shri Abhishek Sinha, learned counsel for the appellant/insurance company has contended that an opportunity ought to have been given to the insurance company to adduce evidence and to prove that the tanker, on which the deceased was admittedly seated at the time of accident, was not insured by it. Learned counsel for the appellant/insurance company prayed that the matter be remitted to the MACT with a direction for affording an opportunity to the appellant/insurance company to adduce evidence solely to prove that the tanker was not insured by the

appellant/insurance company at the time and date of the accident. No other ground was urged.

9. Shri H.B. Agrawal, learned Senior Advocate did not oppose the above prayer and prayed that in the event of remit, respondents No. 3 and 4 be also given an opportunity to lead evidence in rebuttal to show that the tanker was insured by the appellant/insurance company.

10. Having considered the rival submissions, I have perused the record of the MACT. In the interest of justice, it appears necessary to give an opportunity to the appellant/insurance company to lead evidence before the MACT to prove that on the date and time of accident, the tanker was not insured by it.

11. In the result, the appeal is allowed. The impugned award is set aside. The appellant/insurance company and respondents No. 3 and 4 shall appear before the MACT on 27th November, 2007. The MACT, after issuance of notice to the claimants, shall fix a date for recording evidence of the appellant/insurance company on the sole point as to whether the tanker was not insured by the appellant/insurer at the time and date of accident. Upon such evidence being led, respondents No. 3 and 4 shall also be given an opportunity to lead evidence in rebuttal to show that the tanker was so insured by the insurance company. It is made clear that only one opportunity shall be granted to the appellant/insurance company and thereafter to respondents No. 3 and 4. As regards the amount of compensation deposited by the appellant/insurance company before the MACT, the disbursement of the same, if not already done, shall remain stayed till final adjudication by the MACT.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Kvr